



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0178]

Agency Information Collection Activities; Approval of a Revision of an Information Collection Request: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collected will be used to help ensure that motor carriers of passengers and property maintain appropriate levels of financial responsibility to operate on public highways.

DATES: Please send your comments by **[Insert date 30 days after the date of publication of this notice in the Federal Register]**. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration, Chief, Registration, Licensing and Insurance Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor,

1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202-385-2367; email: jeff.secrist@dot.gov. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property.

OMB Control Number: 2126-0008.

Type of Request: Revision of a currently-approved information collection.

Respondents: Insurance underwriters for insurance companies and financial specialists for surety companies of motor carriers of property (Forms MCS-90 and MCS-82) and passengers (Forms MCS-90B and MCS-82B), and motor carrier compliance officers employed by motor carriers to store and maintain insurance and/or surety bond documentation in motor carrier vehicles.

Estimated Number of Respondents: 140,074.

Estimated Time per Response: FMCSA estimates that it takes 2 minutes to complete the Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90 for property carriers) and Endorsement for Motor Carrier Policies of Insurance for Public Liability under Section 18 of the Bus Regulatory Reform Act of 1982 (MCS-90B for passenger carriers) or the Motor Carrier Public Liability Surety Bond under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-82 for property carriers) and Motor Carrier Public Liability Surety Bond under Section 18 of the Bus Regulatory Reform Act of 1982 (MCS-82B for passenger carriers); 1 minute to store/maintain documents at the motor carrier's principal place of business [49 CFR 387.7(d); 49 CFR 387.31(d)]; and 1 minute per vehicle to place the respective document on board the vehicle as required for

non U.S.-domiciled carriers with the exception of Non North American(NNA) who are required to maintain a copy at their Principal Place of Business (PPOB) and file with FMCSA[49 CFR 387.7(f); 49 CFR 387.31(f) 49 CFR Part 387.7(e)(2)].

Expiration Date: March 31, 2021.

Frequency of Response: On a one-time basis or as needed.

Estimated Total Annual Burden: 4,146 hours.

FMCSA published the 60-day Federal Register notice on October 8, 2020 (85 FR 63648), and received 2 comments in response. The first comment, from the National School Transportation Association (NSTA), supports the proposal to renew the MCS-82B and MCS-90B information collection to verify proof of motor carrier financial responsibility. The second comment, from The American Property Casualty Insurance Association (APCIA), raised three issues: (1) That [t]he MCS-90 form is sometimes erroneously treated by trucking regulators as a simple certification of insurance coverage” and that extension of an insurer’s liability “could be easily fixed by limiting the MCS-90 to apply only to accidents occurring inside the United States...”; (2) that keeping the expiration date on the financial responsibility forms creates confusion; and (3) that the unintended consequence related to changes of the MCS-90 Web pages is that some users believe a change in the Web page equates to a change in the MCS-90 itself.

With regard to the first issue, Property Casualty Insurers of America (PCI), a predecessor to APCIA, previously filed a Petition for Rulemaking with FMCSA pertaining to the extension of MCS-90 liability to Mexico. However, given the decision in *Lincoln General Ins. Co. v. De La Luz Garcia*, 501 F.3d 436 (5th Cir. 2007) that effectively granted (PCI) the relief it was seeking in its Petition for Rulemaking, FMCSA decided not to address PCI’s petition further at that time. The *Minimum Levels of Financial Responsibility for Motor Carriers*, is noted in the Federal Register Notice 74 FR 27485,

27487 dated (June 10, 2009). Therefore, given that APCIA's concerns have been previously addressed, FMCSA does not believe changing the MCS-90 is necessary. Additionally, FMCSA does not believe that even if a change was necessary that an ICR proceeding is an appropriate forum for such a change. FMCSA welcomes discussing APCIA's concerns informally and is happy to have a meeting with APCIA to discuss further. With regard to the comment on the expiration date, the commenter noted that the regulation requires that the MCS-90 and its accompanying insurance filing be continuous until canceled, but that having expiration dates on the forms "creates confusion and could change the meaning of the endorsement in the eyes of a court. It needlessly causes motor carriers to worry that their insurance coverage might not satisfy federal requirements, especially as this bureaucratic date often falls behind its intended expiration." APCIA goes on to argue that the date often confuses law enforcement as to if the date refers to the insurer's insurance policy rather than the form. FMCSA agrees with the comment and requests permission to exclude the expiration date from all forms.

With regard to the comment on Web site updates, FMCSA will look into ensuring that any future updates to our webpage are more clear.

BACKGROUND:

The Secretary of Transportation is responsible for implementing regulations which establish minimum levels of financial responsibility for: (1) for-hire motor carriers of property to cover public liability, property damage, and environmental restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The forms MCS-90/90B and forms MCS-82/82B contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (49 CFR 387.9 (motor carriers of property) and 49 CFR 387.33T (motor carriers of passengers)). FMCSA and the public can verify that a motor carrier of

property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility by reviewing the information enclosed within these documents.

PUBLIC COMMENTS INVITED: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87.

Thomas P. Keane,
Associate Administrator,
Office of Research and Registration.